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Department of Water Resources

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF DISTRIBUTION OF
WATER TO VARIOUS WATER RIGHTS
HELD BY OR FOR THE BENEFIT OF A & B
IRRIGATION DISTRICT, AMERICAN FALLS
RESERVOIR DISTRICT #2, BURLEY
IRRIGATION DISTRICT, MILNER
IRRIGATION DISTRICT, MINIDOKA
IRRIGATION DISTRICT, NORTH SIDE
CANAL COMPANY, and TWIN FALLS
CANAL COMPANY

**IGWA'S RESPONSE TO POCATELLO'S
MOTION TO BIFURCATE**

Idaho Ground Water Appropriators, Inc., through its counsel, Givens Pursley LLP, and on behalf of its ground water district members, Aberdeen-American Falls Ground Water District, Magic Valley Ground Water District, Bingham Ground Water District, North Snake Ground Water District, Bonneville-Jefferson Ground Water District, Southwest Irrigation District, and Madison Ground Water District (the "Ground Water Districts" or "IGWA"), hereby opposes the City of Pocatello's ("Pocatello") October 31, 2005 *Motion to Bifurcate the Hearing into Injury and Mitigation Phases* ("Motion to Bifurcate").

The Ground Water Districts have, under the directive of the Department's May 2 Order, undertaken significant effort and expense to acquire replacement water to be available to offset the reasonably likely material injury that the Department prospectively found in its May 2 Order. The Ground Water Districts believe it is necessary and appropriate that the sufficiency of their mitigation be determined coincident with any determination of whether material injury actually exists that will require mitigation, and that they are entitled to develop their record and have both of these issues determined at the earliest opportunity. As to their need to mitigate, or the means by which they may properly do so, the Ground Water Districts should not be left in suspense pending conclusion of a hearing, issuance of an agency order and subsequent judicial review.

Further, the evidence that may pertain to material injury (i.e., what constitutes a full supply of water, futile call, effects of ground water withdrawals under junior rights) has substantial overlap with evidence pertaining to administration and appropriate mitigation (i.e., the extent and predicted effects of curtailment of junior rights and the sufficiency of replacement water supplies as mitigation). Thus, it is not likely that bifurcating the proceedings would result in significant judicial economy or other savings to the parties. Rather bifurcation likely would require the parties' (at least IGWA's and the Surface Water Coalition's) experts to prepare for and appear at two separate hearings. This inevitably would require replication of effort by the parties' counsel and expert witnesses to "get up to speed" on numerous complex facts for the second hearing, regardless of the length of time that may pass between the two proceedings.

For the foregoing reasons, IGWA opposes bifurcation of the proceedings into injury and mitigation phases.

DATED this 14th day of November 2005.

GIVENS PURSLEY LLP

A handwritten signature in black ink, appearing to read "Michael C. Creamer", is written over a horizontal line.

Jeffrey C. Fereday

Michael C. Creamer

Brad V. Sneed

Attorneys for Idaho Ground Water Appropriators, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of November 2005, I served a true and correct copy of the foregoing by delivering it to the following individuals by the method indicated below, addressed as stated.

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